

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 202003703	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 5:26 PM	Location of Incident: Bedford Avenue and Tilden Avenue	Precinct: 70	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 05/31/2020 10:42 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/31/2020 10:42 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Sher	07435	951244	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Officers			
2. POM Dionnys Hernandez	03844	961814	070 PCT
3. POM Mdthowhed Talukder	26269	967364	067 PCT
4. POM Marc Fontana	16274	951741	070 PCT
5. POM Edward Obrien	03529	961548	070 PCT
6. POM Constantin Neamtu	03504	961000	070 PCT
7. POM Arthur Becerra	00279	961495	070 PCT
8. POM Justin Stewart	23742	962819	070 PCT
9. POM Anthony Carolei	11381	961670	070 PCT
10. POM Mateusz Wybraniec	07999	966402	070 PCT
11. LT William Cusack	00000	915539	070 PCT
12. POM Anthony Melidones	00870	961943	070 PCT
13. POM Salvatore Carcaterra	19393	962972	070 PCT
14. POM Tyler Bradshaw	02855	963411	070 PCT
15. POM Christophe Pierre	02499	962014	070 PCT
16. POM Jesus Carrillo	17946	923634	070 PCT
17. POM Daniston Swaby	17025	967699	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
18. POM Jay Huang	31783	965199	070 PCT
19. POM Yasyonfrant Jeanpierre	02796	947104	070 PCT
20. POM Michael Digiovanna	12626	966033	070 PCT
21. SGT Imran Khan	05564	956020	070 PCT
22. SGT Lisa Matamoros	04517	949702	070 PCT
23. POM Anthony Martinez	18157	960883	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Sher	Discourtesy: Police Officer Michael Sher acted discourteously toward § 87(2)(b)	
B.POM Michael Sher	Force: Police Officer Michael Sher used pepper spray against § 87(2)(b)	
C.POM Michael Sher	Abuse: Police Officer Michael Sher did not obtain medical treatment for § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 31, 2020, witness § 87(2)(b) filed this complaint on behalf of § 87(2)(b) via the CCRB website (Board Review 01). Duplicate complaints were filed by reporting non-witnesses § 87(2)(b) and § 87(2)(b) via the CCRB website. This incident received media attention (Board Reviews 22, 23, 24) and was placed on the Agency's Sensitive Case List.

On May 30, 2020, at approximately 5:26 p.m., § 87(2)(b) attended an anti-police brutality protest that had marched to Bedford Avenue and Tilden Avenue in Brooklyn. Police officers surrounded a police vehicle and told the protesters to step back. § 87(2)(b) took one step back while both his arms were raised in the air. Police Officer Michael Sher, then of the 70th Precinct and currently assigned to the 62nd Precinct, pulled down § 87(2)(b)'s COVID-19 face mask (**Allegation A – Discourtesy: Action,** § 87(2)(g) and deployed pepper spray directly into § 87(2)(b)'s face (**Allegation B – Force: Pepper Spray,** § 87(2)(g). Police Officer Sher failed to obtain or attempt to obtain medical treatment for § 87(2)(b) after pepper spraying him (**Allegation C – Abuse of Authority: Refusal to Obtain Medical Treatment,** § 87(2)(g) and § 87(2)(g). § 87(2)(g), § 87(4-b)

This incident was captured on the body-worn cameras (BWC) of Police Officer Sher, Police Officer Mdthowmed Talukder, Police Officer Anthony Martinez, and Police Officer Dionnys Hernandez (Board Review 02, 03, 04, 05). The incident was also captured on a cellphone video filmed by § 87(2)(b)'s brother, § 87(2)(b) and posted to Twitter by § 87(2)(b)'s relative, non-witness § 87(2)(b) (Board Review 06).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Michael Sher acted discourteously toward § 87(2)(b).

Allegation (B) Force: Police Officer Michael Sher used pepper spray against § 87(2)(b).

Allegation (C) Abuse of Authority: Police Officer Michael Sher did not obtain medical treatment for § 87(2)(b).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)'s attorney, § 87(2)(b), did not allow the CCRB to interview § 87(2)(b) or his brother, § 87(2)(b). § 87(2)(b) e-mailed a copy of § 87(2)(b)'s 50-H hearing transcript on January 20, 2021 (Board Review 07).

§ 87(2)(b) was interviewed on June 3, 2020 (Board Review 08). and provided a follow-up telephone statement on June 5, 2020 (Board Review 09). § 87(2)(b) was interviewed on June 5, 2020 (Board Review 10). § 87(2)(b) was interviewed on December 4, 2020 (Board Review 11).

It is undisputed that Police Officer Michael Sher pulled down § 87(2)(b)'s face mask and pepper sprayed him in his face.

The video filmed by § 87(2)(b) begins with § 87(2)(b) standing with both of his arms raised in the air and his palms open. At runtime 00:03, he is facing a group of uniformed officers who are standing in front of a police vehicle. A large crowd of civilians is present. Sirens are heard.

A male voice is heard repeatedly telling the crowd to “Stay back.” Police Officer Sher is seen slowly walking toward civilians with both his arms extended toward them. Police Officer Sher approaches § 87(2)(b) and places his right hand against § 87(2)(b)'s chest. § 87(2)(b) takes one step back while keeping his arms raised. Police Officer Sher then grabs § 87(2)(b)'s face mask with his right hand and lowers it off his face. Police Officer Sher then reaches toward § 87(2)(b)'s bare face with his left hand and pepper sprays him. § 87(2)(b) recoils once he is pepper sprayed.

The incident is also captured in Police Officer Sher's BWC footage at runtime 11:05, Police Officer Talukder's BWC footage at runtime 21:03, Police Officer Martinez's BWC footage at runtime 24:59, and Police Officer Hernandez's BWC footage at runtime 06:24.

At runtime 01:07 into the subclip of the relevant portion of Police Officer Sher's BWC footage (Board Review 25), § 87(2)(b) is heard saying, “Don't touch me,” after Police Officer Sher places his hand on § 87(2)(b)'s chest, before taking off his mask and pepper spraying him. At runtime 06:26 of the subclip, Police Officer Sher is heard telling another officer, “I took the guy's goggles, I ripped the shit off and I used it,” while holding the pepper spray in his left hand.

§ 87(2)(b) § 87(2)(b), § 87(2)(g) He noted that before he was pepper sprayed, officers tried to move a police vehicle through the crowd, and he walked with the crowd backwards in a northbound direction as the officers tried to drive out of the crowd. Approximately one week after the incident, § 87(2)(b) visited an unknown doctor and complained of pain in his eyes when he wore his contact lenses. The doctor told § 87(2)(b) to wait for the pain to subside, which it eventually did.

§ 87(2)(b) description of the incident was generally consistent with the events captured in § 87(2)(b)'s video. § 87(2)(b) and § 87(2)(b) stated that they did not see § 87(2)(b) being pepper sprayed, but saw people rendering aid to him afterwards.

Police Officer Sher's attorney, § 87(2)(b) of § 87(2)(b), sent the CCRB a copy of the Charges and Specifications served to Police Officer Sher by Deputy Inspector Larry Chambers of the Internal Affairs Bureau (Board Review 12). Count 1 of these charges alleges that Police Officer Sher “wrongfully and without just cause used force against one or more people, including pulling down glasses or other eyewear or face masks, and spraying the faces of said people with oleoresin capsicum pepper spray, causing said people to suffer pain and injury.” Count 2 alleges that Police Officer Sher “having used force against one or more people... wrongfully failed to obtain or to attempt to obtain any medical attention for any injured person, notify his immediate supervisor regarding his use of force and oleoresin capsicum pepper spray, document his use of force in his Activity Log, or prepare a ‘Threat, Resistance or Injury (T.R.I.) Interaction Report,’ as required.” § 87(2)(b) also sent the CCRB a copy of Police Officer Sher's Negotiated Settlement (Board Review 13), in which Police Officer Sher pleaded guilty to both counts set forth in his Charges and Specifications.

Police Officer Sher's memo book (Board Review 26) indicates that he responded to a request for assistance at Flatbush Avenue and Tilden Avenue, and the job was finalized as 10-91 (non-crime corrected) at 5:03 p.m. Police Officer Sher did not document his pepper spraying of § 87(2)(b) in his memo book.

As per Patrol Guide Procedure 200-02 (Board Review 14), the NYPD's values include “maintain[ing] a higher standard of integrity than is generally expected of others because so much is expected of [them],” and, “valu[ing] human life, respect[ing] the dignity of each individual, and render[ing their] services with courtesy and civility.”

Patrol Guide Procedure 203-10 (Board Review 15) prohibits officers from “engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department.”

Patrol Guide Procedures 221-01 (Board Review 16) and 221-02 (Board Review 17) state that officers may use force when it is reasonable to ensure officers’ or civilians’ safety, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers’ use of force must be reasonable under the circumstances, and de-escalation techniques, which may reduce or eliminate the need for force by gaining the subject’s voluntary compliance, must be prioritized. Whenever an officer uses force, the officer must “inquire if the subject requires medical attention and document [the] response to [the] inquiry in [their] digital Activity Log.”

Patrol Guide Procedure 221-07 (Board Review 18) states, “O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons... O.C. pepper spray shall not be used in situations that do not require the use of physical force.” After deploying pepper spray, an officer must “request response of Emergency Medical Service (EMS) once the situation is under control.”

Patrol Guide Procedure 212-08 (Board Review 27) states that officers must record all tasks performed and enforcement actions taken in their memo books.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 19).
- Police Officer Sher has been a member of service for ten years and has been a subject in nine other CCRB complaints and 12 other allegations, none of which were substantiated. Police § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) s 50-H hearing was held on § 87(2)(b) (Board Review 07). A copy of § 87(2)(b) s Notice of Claim has been requested from the NYC Comptroller’s Office and will be added to the case file upon receipt (Board Review 20).

- § 87(2)(b)

Squad: 02

Investigator: Jean-Paul Lozada SI Jean-Paul Lozada 08/06/2021
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 8/6/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date